

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX

VAN BALEN LAUNDRY, INC.

Employer

and

Case 6-RD-1476

WILLIAM CALDWELL, AN
INDIVIDUAL

Petitioner

and

AFL-CIO LAUNDRY AND DRY
CLEANING INTERNATIONAL
UNION, LOCAL NO. 141¹

Union

REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION

The Employer, Van Balen Laundry, Inc., operates a retail and non-retail laundry and dry cleaning business in Coraopolis, Pennsylvania, where it employs about seven production employees and a driver. The Union, AFL-CIO Laundry and Dry Cleaning International Union, Local No. 141, has represented the Employer's production employees and drivers for many years and the Employer and the Union have been parties to successive collective-bargaining agreements, the most recent of which expired May 31, 2002. The Petitioner, William Caldwell, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to decertify the Union as the exclusive collective-bargaining

¹ The Union's name appears as amended at the hearing.

representative of the production employees and drivers.² A hearing officer of the Board held a hearing; no party filed a brief with the Regional Director.

As evidenced at the hearing, the parties raise the issue of whether three production employees are ineligible to vote because they are probationary employees.³ The parties are in agreement that the unit sought is an appropriate unit. If the probationary employees are eligible to vote, the unit has approximately eight eligible voters; if the probationary employees are not eligible to vote, the unit has approximately five eligible voters.

I have considered the evidence presented by the parties and, as discussed below, I have concluded that the probationary employees are eligible to vote in the election that will be directed. Accordingly, I have directed an election in a unit that consists of approximately eight employees.

To provide a context for my discussion of this issue, I will first provide an overview of the Employer's operations. Then, I will present the facts and reasoning that support my conclusion on the issue presented here.

I. THE EMPLOYER'S OPERATIONS

The Employer, as noted, operates a retail and non-retail laundry and dry cleaning business. The operations are divided into three departments: laundry, dry cleaning and delivery. Richard Van Balen is an owner of the Employer and serves as the Employer's President. In that capacity, he is responsible for general oversight of the workforce, and he also directly supervises the dry cleaning department. Jan Van Balen, Richard's brother, is also an

² The unit description was amended at the hearing.

³ At the hearing, the parties did not expressly state their positions on the eligibility of the probationary employees. Rather, the Union refused to enter into a stipulation as to their eligibility, stating that it lacked sufficient knowledge about the probationary employees, while the Employer took the position that it was for the Board to determine their eligibility.

owner of the Employer and directly supervises the laundry department. Brian Van Balen, Richard's son, directly supervises the delivery department.⁴

The Employer currently employs four production employees in the laundry department, three production employees in the dry cleaning department and one driver.⁵ The production employees work Monday through Friday, from 8:00 a.m. to 4:30 p.m., with the availability of a half day of voluntary overtime on Saturday. The production employees currently are paid a starting rate of \$6.00 per hour and then are given a 30 cent raise. No current production employee earns more than \$6.30 per hour. The Employer has a 60-day probationary period for new hires.

II. ELIGIBILITY OF PROBATIONARY EMPLOYEES

It is well established that probationary employees are eligible to vote where their general conditions of work are like those of regular employees and they have a reasonable expectation of continued employment. The requirement of completing a probationary period does not militate against a finding that the employees are permanent employees. Johnson's Auto Spring Service, 221 NLRB 809 (1975), and cases cited therein.

In this case, there are two probationary employees in the laundry department, one having started work on July 10, 2002, and one having started work on July 17, 2002. They each work as shirt pressers, as does another non-probationary employee in the laundry department. In addition, there is one probationary employee in the dry cleaning department who started work on August 29, 2002, and works as a presser, as does another non-probationary employee in the dry cleaning department.

⁴ The parties are in agreement, and I so find, that by virtue of their ownership interests, Richard and Jan Van Balen are ineligible to vote in the election. Further, the parties are in agreement, and I so find, that inasmuch as Brian Van Balen is the son of one of the co-owners, he is ineligible to vote. Given this finding, I do not reach the question of whether Brian Van Balen is a supervisor within the meaning of Section 2(11) the Act.

⁵ The Employer also employs an employee, Gelsey Delpercio, who performs office clerical duties and works at the counter. No party contends that Delpercio should be in the unit, and given her clerical functions, she is not eligible to vote in the election.

These three probationary employees work the same hours as the other production employees. They are paid on the same wage scale, have the same supervision, and have the same work location as the other production employees. Indeed, there is no evidence that there is any difference in the terms and conditions of employment of the probationary employees as compared to the permanent employees.

Further, the uncontroverted testimony reveals that the Employer is satisfied with the performance of each of the probationary employees and intends to retain each at the conclusion of their probationary period. In fact, the first-hired of these employees has already been granted the 30 cent wage increase, bringing his hourly rate to the same rate as the permanent production employees.

Accordingly, I find that the three probationary employees are eligible to vote in the election that will be directed in that they share a community of interest with the permanent employees and they have a reasonable expectation of continued employment. See Johnson's Auto Spring Service, supra.

III. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction in this matter.
3. The Union claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section (9)(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the

purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time production employees⁶ and drivers employed by the Employer at its Coraopolis, Pennsylvania facility; excluding office clerical employees and guards, professional employees and supervisors as defined in the Act.

IV. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by AFL-CIO Laundry and Dry Cleaning International Union, Local No. 141. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the election date and who retained their status as such during the eligibility period, and the replacements of those economic strikers. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

⁶ The probationary employees eligible to vote in the election are: Allen R. Cogar, Clifford L. Mack, and Mary A. Milliner.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, Room 1501, 1000 Liberty Avenue, Pittsburgh, PA 15222, on or before **September 23, 2002**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (412) 395-5986. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting

requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so precludes employers from filing valid objections to the election based on nonposting of the election notice.

V. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **September 30, 2002**. The request may **not** be filed by facsimile.

Dated: September 16, 2002

/s/Stanely R. Zawatski
Stanley R. Zawatski,
Acting Regional Director,
National Labor Relations Board
Region 6

Classification Index
460-5067-2101